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Small Freys Children Center, Inc. and Heather Harnish and Abby Smith and Brittany Ditzler.
Cases 4–CA–37248, 4–CA–37249, and 4–CA–37251

May 26, 2010

DECISION AND ORDER

BY MEMBERS SCHAUMBER, BECKER, AND PEARCE

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges and amended charges filed by Heather Harnish, Abby Smith, and Brittany Ditzler on December 28, 2009, and February 23, 2010, respectively, the General Counsel issued a consolidated complaint on March 5, 2010, against Small Freys Children Center, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On March 31, 2010, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 2, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was received by March 19, 2010, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated March 22, 2010, notified the Respondent that unless an answer was received by March 29, 2010, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, has operated a daycare center at 45 Market Square, Manheim, Pennsylvania (the Center), and an after-school program at the H.C. Burgard Elementary School in Manheim Township.

During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, received gross revenues in excess of \$250,000 and received subsidies from the Commonwealth of Pennsylvania and from the Federal government valued in excess of \$3000, which entities are directly engaged in interstate of commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Barbara Frey and Alyssa Soule held the positions of president/director and assistant director, respectively, and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, Tracey Meyers has been the Respondent's secretary and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

The Respondent, by Barbara Frey, engaged in the following conduct at the Center:

(1) On about October 12, 2009: interrogated an employee concerning the protected concerted activities of the employee and other employees; and threatened to discharge employees if they contacted Frey concerning late and short paychecks.

(2) On about October 14, 2009, with Alyssa Soule: interrogated employees concerning the protected concerted activities of the employees and other employees; and threatened to sue employees for slander because they were engaging in protected concerted activities.

(3) On about October 16, 2009, with Alyssa Soule: interrogated an employee concerning the protected concerted activity of the employee and other employees; interrogated the employee concerning contacts with the "Department of Labor"; and gave the employee "a week" to consider being taken back as an employee, provided that employees would "disband" and cease talking to each other.

(4) On about October 19, 2009, implemented a rule prohibiting employees from discussing employment issues or day care issues outside the workplace.

On about October 12, 2009, the Respondent's employees, including Heather Harnish, Abby Smith, and Brittany Ditzler, discussed activities they would consider to respond to the Respondent's failure or refusal to give them timely and correct paychecks, including calling the Center to advise that they would not be reporting for work on October 13, 2009.

On about October 12, 2009, the Respondent's employees, including Heather Harnish and Brittany Ditzler, but not Abby Smith (who was not scheduled to work on October 13, 2009), called the Center advising that they would not be reporting for work on October 13, 2009.

On about October 14, 2009, the Respondent discharged its employees Abby Smith and Brittany Ditzler.

On about October 16, 2009, the Respondent discharged its employee Heather Harnish.

The Respondent engaged in the conduct described above because Harnish, Smith, Ditzler, and other employees engaged in the conduct referred to above, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by discharging Heather Harnish, Abby Smith, and Brittany Ditzler because they engaged in protected concerted activities, we shall order the Respondent to offer these employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹ The Respondent shall also be required to re-

move from its files any and all references to the unlawful discharges of Harnish, Smith, and Ditzler, and to notify these employees in writing that this has been done and that the unlawful discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Small Freys Children Center, Inc., Manheim, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their and other employees' protected concerted activities.

(b) Threatening to discharge employees if they contact the Respondent or its agents concerning their paychecks being late or short.

(c) Threatening to sue employees for slander because they engaged in protected concerted activities.

(d) Interrogating employees concerning contacts with the "Department of Labor," and giving employees "a week" to consider being taken back as an employee, provided that employees would "disband" and cease talking to each other.

(e) Implementing a rule prohibiting employees from discussing employment issues or day care issues outside the workplace.

(f) Discharging or otherwise discriminating against employees because they engaged in protected concerted activities, or to discourage employees from engaging in such activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Heather Harnish, Abby Smith, and Brittany Ditzler full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Heather Harnish, Abby Smith, and Brittany Ditzler whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Heather Harnish, Abby Smith, and Brittany Ditzler, and

¹ In the complaint, the General Counsel seeks interest computed on a compounded quarterly basis for any backpay or other monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g.,

Glen Rock Ham, 352 NLRB 516, 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

within 3 days thereafter, notify these employees in writing that this has been done, and that the unlawful discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Manheim, Pennsylvania, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 12, 2009.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 26, 2010

Peter C. Schaumber, Member

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees concerning their and other employees' protected concerted activities.

WE WILL NOT threaten to discharge employees if they contact us or our agents concerning their paychecks being late or short.

WE WILL NOT threaten to sue employees for slander because they engaged in protected concerted activities.

WE WILL NOT interrogate employees concerning contacts with the "Department of Labor," or give employees "a week" to consider being taken back as an employee provided that employees would "disband" and cease talking to each other.

WE WILL NOT implement rules prohibiting employees from discussing employment issues or day care issues outside the workplace.

WE WILL NOT discharge or otherwise discriminate against employees because they engaged in protected concerted activities, or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Heather Harnish, Abby Smith, and Brittany Ditzler full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Heather Harnish, Abby Smith, and Brittany Ditzler whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Heather Harnish, Abby Smith, and Brittany Ditzler, and WE WILL, within 3 days thereafter, notify

these employees in writing that this has been done, and that the unlawful discharges will not be used against them in any way.

SMALL FREYS CHILDREN CENTER, INC.